IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7635 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHUKLA DAXABEN BALKRISHNA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MS ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/11/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order

of declaration that the petitioner is confirmed or deemed to have been confirmed as Librarian by the respondents and that the petitioner is entitled to pay, increment and allowances available to her post.

2. It is the contention on behalf of the petitioner that on 28.2.1995 the respondent No.1 passed order that the petitioner was selected by the selection committee as Librarian in the pay-scale of Rs.1400/- - Rs.2300/- in Class-III at C.U.Shah Polytechnic at Surendranagar on ad-hoc basis on terms and conditions set out in the order. It is further submitted in the petition that condition No.1 provided that services of the petitioner on ad-hoc basis will be regularized on proof of her competence after experience and suitability. It is further submitted that she is deemed to have been confirmed and her services should be deemed to have been regularized as Librarian as she has been working for more than 42 months at the relevant time. It is further submitted that on

3.9.1998, advertisement is given in the local newspapers “Sandesh” inviting applications for the post of Librarian (Class-III) in C.U.Shah Polytechnic at Surendranagar and she reasonably apprehended that the respondent No.1 intends to terminate the services of petitioner for oblique motives when petitioner fulfills all the qualifications required for the said appointment and therefore, the petitioner preferred the present Special Civil Application for the aforesaid reliefs. By way of amendment, it is also further submitted that the selection committee does not have any power to make ad-hoc appointment. It is further submitted that when subsequently, petitioner fulfilled the criteria and obtained the experience, it is requested to allow the present Special Civil Application.

3. Petition is opposed by the respondents. It is submitted that as per the rules regulating the recruitment to the post of Librarian to be eligible for the appointment of direct selection to the post of Librarian, a candidate must have

about one year full time experience of working independently as a Librarian in the Government department or reputed educational institutions or library. At the relevant time, the candidate was not available having one year full time experience of working independently as a Librarian in the Government department or reputed educational institutions or library and therefore, the petitioner was appointed on purely ad-hoc basis as even she was not having requisite qualifications as per the rules. It is submitted that the respondents initiated the proceedings for filling up the posts of Librarian by giving fresh advertisement, which is legal and valid. It is further submitted that merely because, the petitioner was appointed on ad-hoc basis and subsequently, she might have acquired the experience, it does not mean that she is to be confirmed on that very post.

4. It is not in dispute that at the relevant time when the selection process was made, the petitioner was not having requisite experience

of one year as required under Rule – III of the Rules regulating recruitment to the post of Librarian in the Government Polytechnics. Thus, the petitioner was not eligible for appointment by direct selection to the post of Librarian when the petitioner was appointed on ad-hoc basis. It is the case on behalf of the respondents that as no candidate was available having requisite qualifications and fulfilling the eligibility criteria, the petitioner was appointed on purely ad-hoc basis. Merely because, the petitioner was appointed on purely ad-hoc basis, the petitioner cannot be made confirmed on the basis of the aforesaid appointment order as her appointment was on ad-hoc basis. As such, her initial appointment itself is contrary to the recruitment Rules as the petitioner was not fulfilling the requisite eligibility criteria. Thus, merely because, the petitioner was appointed on ad-hoc basis and that too when the same is contrary to the recruitment Rules, the prayer of the petitioner for a declaration to declare that she is

confirmed to the post of Librarian having subsequently acquired the eligibility criteria, cannot be accepted. Subsequently, when the respondents have initiated the process to fill up the posts of Librarian in accordance with the statutory recruitment Rules, it cannot be said that the respondents acted arbitrarily or illegally. The respondents cannot be restrained from filling up the posts of Librarian in accordance with the statutory recruitment Rules.

5. It is required to be noted at this stage that while admitting the present Special Civil Application and granting the interim relief on 29.9.1998, this Court passed the following order:-

"Draft amendment granted.

At the request of Mr. P.B.Bhatt, learned AGP, S.O. to 16.11.1998, to enable him to file reply affidavit.

In the meantime by way of interim order, the respondents are directed not to

relieve or replace the petitioner from the post of Librarian. However, it is clarified that it will be open to the respondents to proceed further with the selection process for the post of Librarian. However, they will not pass any order of appointment to the said post. It is further clarified that considering the fact that the petitioner is serving as a Librarian since two and half years and has already applied for the said post, the respondents shall consider the case of the petitioner irrespective of the fact that the petitioner has preferred the present petition.

D.S. Permitted."

6. This Court called upon the learned AGP to point out as to whether any selection process was completed or not. Ms. Archna Raval, learned AGP has submitted that during the pendency of the present Special Civil Application, there was 10% cut by the State Government and therefore, further process of filling up of the aforesaid posts could not be completed, however, thereafter, they have sent necessary proposal to

the State Government and the same is in process. Under the circumstances and considering the above, while dismissing the present Special Civil Application and refusing to grant relief as prayed for in the present Special Civil Application and refusing to issue declaration that the petitioner is confirmed, it is directed to the respondents to complete the selection process and fill up the posts of Librarian at C.U.Shah Polytechnic at Surendranagar after obtaining necessary approval from the State Government and to fill up the posts of Librarian on regular basis in accordance with the statutory recruitment Rules and the said exercise to be completed within 6 months from today, till then, the respondents are directed to continue the petitioner on purely ad-hoc basis. However, it will be open for the petitioner to submit the application and apply for the said post and the respondents are directed to consider the case of the petitioner along with the other candidates. However, in view of the pendency of the present Special

Civil Application and the petitioner continue in services, the petitioner's case shall not be rejected on the ground that the petitioner has become age barred, if any. Thus, as and when the applications are invited and the petitioner applies, as stated above, the case of the petitioner be considered in accordance with law and on merits without raising the objections of age barred.

7. With these, the present Special Civil Application is disposed of. No costs.

[M.R.SHAH, J.]

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